

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3       UNITED STATES OF AMERICA,                   Criminal Action  
4                   Plaintiff,                               No. 1:07CR412  
5       vs.                               Greensboro, North Carolina  
6       MARKO RUDI,                               March 18, 2010  
7                   Defendant.

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10                   TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS  
11                   BEFORE THE HONORABLE N. CARLTON TILLEY, JR.  
12                   UNITED STATES DISTRICT JUDGE

13       APPEARANCES:

14       For the Government:       ROBERT HAMILTON, ESQUIRE  
15                               Assistant United States Attorney  
16                               Post Office Box 1858  
                             Greensboro, North Carolina 27402

17       For the Defendant:       CHRISTOPHER CLIFTON, ESQUIRE  
18                               Grace, Tisdale & Clifton  
19                               301 North Main Street  
                             Suite 1200  
                             Winston-Salem, North Carolina 27101

20       Court Reporter:       J. Calhoun, RPR  
21                               Room 101, U.S. Courthouse Building  
22                               324 West Market Street  
                             Greensboro, North Carolina 27401  
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23  
24                   Proceedings reported by stenotype reporter.  
25                   Transcript produced by computer-aided transcription.

1 (Defendant is present.)

2 MR. HAMILTON: First matter is United States  
3 versus Marko Rudi, 1:07CR412-1, here for purposes of change  
4 of plea, Your Honor. He is represented by Mr. Clifton.

5 THE COURT: How are you, Mr. Clifton?

6 MR CLIFFORD: Good afternoon, Your Honor.

7 THE COURT: Mr. Rudi, let me speak with you for  
8 just a moment before I talk to Mr. Clifton. I must ask a  
9 series of questions of you and of Mr. Clifton before I  
10 accept your plea of guilty. I must first determine, before  
11 accepting your plea of guilty, whether you understand the  
12 charges, whether you understand what the Government would  
13 have to do to prove your guilt, your right to plead not  
14 guilty to the charges, the punishment that you could  
15 receive, and then determine whether or not your decision to  
16 plead guilty is one that's totally voluntary.

17 Now, first I'll ask Mr. Clifton some questions.  
18 Listen very carefully, both to my questions and to his  
19 responses. If the information you would give were you  
20 answering those questions is any different from that given  
21 to me by Mr. Clifton, then tell me about that when you and I  
22 talk. You will placed under oath to answer the questions I  
23 pose truthfully. A false answer could result in your being  
24 prosecuted for a separate offense known as perjury, so make  
25 sure that your answers are truthful. Make sure you

1 understand my questions.

2 If you have questions, the appropriate thing to do  
3 is to ask. If as we're going through this you really do not  
4 wish to plead guilty, you really would rather have your case  
5 heard by a jury, that would be fine, just simply let me know  
6 that.

7 Every person has the right to plead not guilty to  
8 every criminal charge, and the right to have the case heard  
9 by a jury, so if that should be your decision, just simply  
10 let us know that. That's okay.

11 Do you have any questions about anything that I  
12 just said?

13 THE DEFENDANT: No, sir.

14 THE COURT: Mr. Clifton, you've been representing  
15 Mr. Rudi for how long?

16 MR. CLIFTON: Over a year.

17 THE COURT: And during that time, have you fully  
18 explained the charges brought against him in this  
19 indictment?

20 MR. CLIFTON: Yes, sir.

21 THE COURT: Do you believe he understands those  
22 charges?

23 MR. CLIFTON: I do.

24 THE COURT: Have you fully investigated his case,  
25 including the facts he's told you about, the case file in

1 the U.S. Attorneys Office, have you interviewed any  
2 witnesses made necessary by your discussions with him, or  
3 your review of the case file in the U.S. Attorneys Office,  
4 and have you explained to him the punishment that he could  
5 receive in this case?

6 MR. CLIFTON: I have, Your Honor.

7 THE COURT: And do you believe he understands the  
8 charges and the evidence that you've discussed?

9 MR. CLIFTON: Yes, sir.

10 THE COURT: Do you believe he understands the  
11 punishment that he could receive?

12 MR. CLIFTON: Yes, sir.

13 THE COURT: Have you discussed everything in the  
14 plea agreement with him?

15 MR. CLIFTON: Yes, sir.

16 THE COURT: Do you believe he understands  
17 everything in his plea agreement?

18 MR. CLIFTON: I do.

19 THE COURT: Do you have knowledge of anybody  
20 threatening him in any way, trying to get him to enter a  
21 plea of guilty?

22 MR. CLIFTON: I do not.

23 THE COURT: Or suggesting to him that if he pled  
24 guilty, he would receive a lighter sentence than he would  
25 receive if he went to trial and were found guilty by a jury?

1 MR. CLIFTON: No, sir.

2 THE COURT: Do you believe his decision to enter a  
3 plea of guilty to the charge in Count Three, is totally  
4 voluntary?

5 MR. CLIFTON: I do.

6 THE COURT: And consistent with the evidence in  
7 the case?

8 MR. CLIFTON: Yes, sir.

9 THE COURT: Is that your recommendation to him and  
10 to the Court, that it be accepted?

11 MR. CLIFTON: That is my recommendation.

12 THE COURT: Mr. Rudi, I see you're restrained, you  
13 can't raise your hands far, but would you place your left  
14 hand on the bible in front of you, and raise your right as  
15 far as you're able to.

16 (Defendant was sworn.)

17 THE COURT: Mr. Rudi, is Marko Rudi your true and  
18 full name?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Just those two names?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How old are you, sir?

23 THE DEFENDANT: Thirty-four.

24 THE COURT: And you went how far in school?

25 THE DEFENDANT: I'm sorry.

1 THE COURT: How far in school did you go?

2 THE DEFENDANT: Masters degree.

3 THE COURT: If I ask anything that you're not sure  
4 about, please understand that you may ask me to explain it  
5 or repeat it. You may talk to Mr. Clifton before you answer  
6 any question.

7 First of all, did you agree with all of the  
8 answers that Mr. Clifton just gave to me?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you believe you understand your  
11 charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand the punishment  
14 that you could receive?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand everything in your plea  
17 agreement?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Nobody has threatened you in any way,  
20 trying to get you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Or indicated that if you pled guilty,  
23 you would receive a lighter sentence than you would receive  
24 if you went to trial and were found guilty by a jury?

25 THE DEFENDANT: No, sir.

1           THE COURT: It is my understanding from looking at  
2 your plea agreement, that you are offering to plead guilty  
3 to the charge in Count Three of your indictment; is that  
4 correct?

5           THE DEFENDANT: That's correct, sir.

6           THE COURT: Do you understand that if I accept  
7 your plea of guilty, you can receive a term in prison of up  
8 to ten years, and a fine of up to a million dollars.

9           Is that your understanding?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: And that the fine could be more if the  
12 loss to the Government in your case rises to more than that.

13          THE DEFENDANT: I understand.

14          THE COURT: Do you understand that you could be  
15 required to pay any money back that the Government is out as  
16 a result of any actions taken by you alleged in the case?

17          THE DEFENDANT: Yes, sir.

18          THE COURT: Any questions about that?

19          THE DEFENDANT: No, sir.

20          THE COURT: Do you understand that you would  
21 receive a term of supervised release of probably three  
22 years, in addition to any term of active imprisonment that  
23 you receive?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: The term supervised release refers to

1 a form of release when a person has served a term of active  
2 imprisonment, that person is released coming out of prison  
3 on what is known as supervised release. The person is  
4 supervised by a U.S. Probation Officer. There are a number  
5 of conditions that have to be followed. The failure to  
6 follow even one of those conditions, could result in the  
7 person being brought back to court, and upon presentation to  
8 the judge of just enough evidence to show that it's more  
9 likely true than not that the person did violate a term of  
10 supervised release, supervised release can be revoked, and  
11 the person placed back in prison for up to the entire amount  
12 of supervised release, up to an additional three years in  
13 your case.

14 Is that your understanding?

15 *(Mr. Clifton and the Defendant confer off the record.)*

16 MR. CLIFTON: We've had discussion about -- he's a  
17 foreign national, with no status in the United States. I  
18 explained to him if he stays in the U.S. he has to report  
19 after he's released and that would still be in effect  
20 afterwards. That's what he was asking about.

21 THE COURT: Okay. You are a citizen of what  
22 nation?

23 THE DEFENDANT: Republic of Estonia.

24 THE COURT: Should you be deported and not stay in  
25 the United States, the special condition of release would be



1 not to re-enter the United States without first getting  
2 permission to do so from the Secretary of Homeland Security.  
3 Entry into the United States without that permission, within  
4 the period of supervised release, could result in your being  
5 sent back to prison for up to three years, but if you're  
6 deported and ever come back, even in a hundred years, unless  
7 the law has changed, you would still need to get permission  
8 to do so or be subject to being prosecuted under another  
9 statute of the United States, which says once somebody has  
10 been deported, they may not return without getting  
11 permission.

12 Do you have questions about that?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you understand that before you  
15 could be found guilty of the charge in your case, the  
16 Government would have to prove that you, or a company you  
17 worked for, had some contractual relation with the United  
18 States, and that you had some scheme to defraud the United  
19 States in some way as part of that contract or in the  
20 execution of that contract. It is alleged you took a  
21 kickback or a bribe from somebody bidding for services for a  
22 company for which you worked to enable that party to get a  
23 job for which it would receive a rather sizable amount of  
24 money from the United States, and that you understood what  
25 it was that you were doing by asking for that or accepting

1 that, and that you acted with the knowledge that you were  
2 not entitled to that, and that it would injure the United  
3 States by accepting it.

4 Do you understand those things would have to be  
5 proven before you could be found guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Any questions about that?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you understand you have the right  
10 to plead not guilty to that charge?

11 THE DEFENDANT: I understand.

12 THE COURT: And you could not be found guilty,  
13 unless the Government could prove each of those elements  
14 that I just mentioned beyond a reasonable doubt.

15 Is that your understanding?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And that you would have the right to  
18 be represented by an attorney. Mr. Clifton could examine  
19 every witness the Government called in its effort to prove  
20 those elements we discussed, could call witnesses on your  
21 behalf. If you couldn't afford to pay for those witnesses  
22 to come here, then the Court would pay for their travel to  
23 get here and witness fees while they are here, that you  
24 would have the right to testify if you wish in your defense,  
25 and if you did testify, the Court would explain to the jury

1 it should consider your testimony by the same standards  
2 applied to any other witness, but if during the trial you  
3 did not wish to testify, you would have the right to elect  
4 not to testify, and nobody could make you be a witness, and  
5 that was your choice.

6 The Court would explain to the jury that every  
7 defendant in a criminal case has the right not to testify,  
8 and the jury could not consider your election not to testify  
9 for any purpose during its decision, whether you should be  
10 found guilty or not.

11 Do you have questions about that?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have questions about any of the  
14 rights I just discussed?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you understand that if you could  
17 not afford to pay Mr. Clifton or another lawyer to represent  
18 you, then the Court would appoint an attorney who would  
19 represent you, and the Court would pay for it.

20 Is that your understanding?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I have been given a document entitled  
23 factual basis, which sets out certain facts and allegations  
24 pertaining to the charges against you.

25 Have you read that document?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you discussed it with  
3 Mr. Clifton?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You may talk with him, certainly,  
6 before answering this question, but my question to you is:  
7 Are the facts set out in that document accurate facts?

8 THE DEFENDANT: Not all of them.

9 THE COURT: Then, Mr. Clifton, would you point out  
10 what is not.

11 MR. CLIFTON: Yes, sir. And I'll preview for the  
12 Court, Mr. Hamilton and I arrived at this factual basis  
13 together, and agree on almost everything in the report. I  
14 will tell you that on the last page, the last remaining  
15 objection, and that is the last paragraph, that other  
16 companies related to BSH wired additional funds to Durham,  
17 we don't agree with the Government on that. We sort of  
18 agree to disagree.

19 We agree with the amount in the paragraph above  
20 that, that figure in the loss amount, and we of course would  
21 like to reserve our right to be heard as to loss in this  
22 case, but that is our main objection to the factual basis  
23 there.

24 THE COURT: Do you agree with what Mr. Clifton has  
25 just told me, Mr. Rudi?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have objections to anything  
3 else in the factual basis?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Hamilton, you are not agreeing  
6 with what they are saying; is that correct?

7 MR. HAMILTON: That's correct, Your Honor.

8 THE COURT: So that will be a matter for the Court  
9 to determine at sentencing?

10 MR. HAMILTON: Yes, Your Honor. It would not go  
11 to the factual basis for plea, it would be a sentencing  
12 issue.

13 MR. CLIFTON: If I may, Your Honor, we have worked  
14 consistently, probably 90 to 120 days with the victim  
15 corporation. Josh Howard is here representing them today.  
16 I have been to his office. We emailed back and forth. I  
17 hope that loss calculation will be resolved by then, but I  
18 wanted to make sure that it was noted for the Court that  
19 it's not yet, and if it's not, we would like to be heard on  
20 that objection.

21 THE COURT: Are you in agreement with what  
22 Mr. Clifton has just said, Mr. Rudi?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that even though the  
25 statute says you could receive up to ten years, it will be

1 up to the Court to determine where between zero and ten  
2 years you should be sentenced? Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: And that under the Federal Sentencing  
5 Guidelines, your guideline range under the applicable  
6 guidelines will first be determined. One of the things that  
7 will determine your guideline range is how much money is  
8 involved, how much was the Government out, how much did you  
9 gain improperly, and that would be one of the factors that  
10 would go into the calculation of what your guideline range  
11 will be. There will be other factors that go into that, and  
12 at this point, it is too early for anybody to be able to  
13 accurately calculate exactly what your guideline range will  
14 be.

15 Is that your understanding?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And while the Court is required to  
18 consider a person's guideline range once it is properly  
19 calculated, the Court doesn't have to sentence somebody  
20 within that guideline range. Sometimes there are facts or  
21 circumstances that would allow what is known as a departure  
22 under the guidelines, either above or below, but even if  
23 there are not, the Court still has the authority, in  
24 considering the law that applies in every case when the  
25 Court sentences somebody, 18 United States Code, Section

1 3553(a), provides several things for the Judge to consider  
2 in every sentencing proceeding, so it is possible in  
3 considering those factors, that the Court may elect to vary  
4 above or below your guideline range.

5 Is that also your understanding?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have questions about that?

8 THE DEFENDANT: No, sir.

9 THE COURT: But you do understand that we cannot  
10 correctly calculate today what your guideline range will be?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that even though you and  
13 Mr. Clifton may have talked together and spent considerable  
14 time trying to determine what it is, that there is no way  
15 now he can do that with any accuracy. You do understand  
16 that?

17 THE DEFENDANT: I do understand.

18 THE COURT: Any questions about that?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you pleading guilty because you  
21 are in fact guilty of that charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: On page four of your plea agreement,  
24 Paragraph 5B, there is language to the effect that the U.S.  
25 Attorneys Office may recommend to the Court, as your

1 sentencing guidelines are being calculated, that you receive  
2 credit for what is known as acceptance of responsibility;  
3 perhaps of two levels, perhaps of three levels, but even if  
4 the U.S. Attorneys Office does make that recommendation, the  
5 Court doesn't have to follow that recommendation. I'm not  
6 telling you I would not, I'm saying the law does not require  
7 me to.

8 Is that your understanding?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have questions about that?

11 THE DEFENDANT: No, sir.

12 THE COURT: Also in Paragraph 5C immediately below  
13 that, there is language to the effect that once your  
14 guideline range is calculated, the United States will  
15 recommend to the Court, that you receive a sentence at the  
16 low end of that range.

17 Do you understand the Court does not have to  
18 follow that recommendation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you understand that if the Court  
21 does not follow either that recommendation or the  
22 recommendation that you receive acceptance of  
23 responsibility, you would not be entitled to withdraw your  
24 plea of guilty?

25 THE DEFENDANT: I understand, sir.



1           THE COURT: Do you understand that once I have  
2           accepted your plea of guilty, it is highly unlikely that the  
3           law would ever allow you to withdraw that plea of guilty?

4           THE DEFENDANT: I understand that, sir.

5           THE COURT: Do you have questions about anything  
6           that we've talked about today?

7           THE DEFENDANT: No, sir.

8           THE COURT: Anything in your plea agreement that  
9           you have questions about?

10          THE DEFENDANT: No, sir.

11          THE COURT: I think when we were talking about the  
12          punishment that you could receive and I discussed  
13          restitution with you, I talked about paying money back to  
14          the United States. You understand you could be ordered to  
15          pay money back to any victim?

16          THE DEFENDANT: I understand.

17          THE COURT: Do you have any questions before I  
18          accept your plea of guilty?

19          THE DEFENDANT: No, sir.

20          THE COURT: And you still wish for me to accept  
21          your plea of guilty?

22          THE DEFENDANT: Yes, sir.

23          THE COURT: The Court finds that Mr. Rudi's plea  
24          of guilty to the charge in Count Three is knowingly and  
25          voluntarily entered, and that there is a factual basis to

1 support his plea of guilty.

2 We will set sentencing for September the 16th in  
3 this courtroom, at 9:30 in the morning. A presentence  
4 report will be done in your case. That basically is a  
5 thorough history of you and many things about you. The  
6 probation officer who does that will be the first person to  
7 make an official calculation of your guideline range. It is  
8 very important to get those facts correct, so please do  
9 cooperate with that probation officer. Once a draft is made  
10 of the report, it will be sent to Mr. Clifton. He will go  
11 over it with you.

12 If you feel some error has been made, either in  
13 the facts or in the application of the guidelines to the  
14 facts, then he will work with the probation officer and the  
15 Government's lawyer trying to iron that out. If it can't be  
16 ironed out, he may file a legal brief with the Court, called  
17 a position paper, so the Court can make that determination,  
18 but please do cooperate.

19 THE DEFENDANT: Will do.

20 MR CLIFFORD: If I may, Your Honor, he's been in  
21 custody 20 months at this point, and we're going to work  
22 with the Government on the offense conduct and provide it  
23 for probation. If that report is done before that, I would  
24 just ask to move before that --

25 THE COURT: If the report is done and we can work

1     it in before then, sure.

2                 THE COURT:  Anything further, Mr. Clifton,  
3     Mr. Hamilton?

4                 MR. HAMILTON:  No, sir.

5                 MR. CLIFTON:  No, sir.

6                 (This matter was concluded.)  
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## C E R T I F I C A T E

I, J. CALHOUN, RPR, United States District Court  
Reporter for the Middle District of North Carolina, DO  
HEREBY CERTIFY

That the foregoing is a true and correct transcript  
of the proceedings had in the within-entitled action; that  
I reported the same to typewriting through the use of  
Computer-Aided Transcription.

THIS TRANSCRIPT CERTIFICATION IS VOID, IF THE  
SIGNATURE IS NOT ORIGINALLY SIGNED BY THE COURT  
REPORTER WHO REPORTED THIS MATTER.



Date: 9-14-10

J. Calhoun, RPR  
United States Court Reporter  
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